

Where a contractor contracts to sell tangible personal property without installation and then separately contracts to install such property to real property, the contractor is considered a retailer for purposes of the sale of tangible personal property and would incur Retailers' Occupation Tax liability on such sale. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

July 7, 2003

Dear Xxxxx:

This letter is in response to your letter dated April 24, 2003 and our phone conversation on May 15, 2003. The nature of your letter and information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

Would your office please clarify in writing on who accepts responsibility for paying use tax or sales tax regarding the following situation? Our customer is giving us a resale certificate. Our customer is telling us they are responsible for paying the sales tax upon billing their customer for the equipment.

Can we accept their resale certificate if we are installing this equipment for the end user? Normally if we install equipment to real property, we pay a use tax and invoice the end user for the equipment. However, in this situation, we are not billing the end user.

Is their resale certificate acceptable and does this eliminate our obligation to pay use tax?

Based on the information provided in your letter and in our recent phone conversation about the contract you anticipate entering into with your customer, the contract for purchase and installation of equipment into real property would be considered a construction contract. As the contractor, AAA would incur Use Tax on the cost price of the tangible personal property that is installed.

Please refer to the enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding tax liabilities of construction contractors in Illinois. The term construction contractor includes general contractors, subcontractors, and specialize contractors, such as landscape contractors. The term contractor means any person engaged in the occupation of entering into and performing construction contracts. In Illinois, construction contractors are deemed the end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property,

contractors incur Use Tax liability for such purchases based upon their cost price. See 130.1940(c). When purchases are made from Illinois registered suppliers, the tax is to be paid to those suppliers at the rates in effect at the suppliers' location. If purchases are made from out-of-State suppliers not registered to collect Illinois tax, the contractor must self-assess this tax and remit it to the Department.

According to your letter and our phone conversation, AAA anticipates contracting to sell equipment to its customer and also to install such equipment for its customer as part of the contract. With regards to AAA's liability for Use Tax on the cost price of the property sold and installed, it matters not that the equipment purchased by AAA's customer will be installed to real property not owned by such customer. If, however, AAA were to contract to sell the equipment without installation and then separately contract to install the equipment to real property, AAA would be considered a retailer and would incur Retailers' Occupation Tax liability on the sale of the tangible personal property. See 130.1940(b)(1). If AAA's customer is purchasing the equipment for purposes of resale in such event, then AAA may accept a Certificate of Resale from its customer in order to avoid incurring sales tax on the transaction. See the enclosed copy of 86 Ill. Adm. Code 130.1405.

As stated above construction contractors are deemed the end users of tangible personal property that is purchased for incorporation into real property. It is important to point out that since the contractor is the end user of the materials that they permanently affix to real estate, its customer incurs no Use Tax liability and the contractor has no legal authority to collect the Use Tax from its customer. However, many construction contractors pass on the amount of their Use Tax liabilities to their customers in the form of higher prices or by including provisions in their contracts that require customers to reimburse the contractor for its liability. This reimbursement cannot be billed to a customer as a "sales tax", but can be listed on a bill as a reimbursement of tax. Whether a contractor requires a tax reimbursement from its customer or raises its price is a business decision on the part of the contractor.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at www.state.il.us. If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in item 1 through 8 of Section 1200.110(b). Such regulation may be obtained from our website mentioned above.

Sincerely,

Dana Deen Kinion
Associate Counsel

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